

REMARKS

Applicant thanks the Examiner for the courtesy of partaking in a telephone interview with Applicant on January 29, 2008.

Claims 1-40, 42, and 44-52 are currently pending in the instant application. Claims 1 and 17 have been rejected under 35 U.S.C. §112 second paragraph, as being indefinite. Claims 1, 9-13, 16-23, 26, 29-30, 32-34, 36-37, 39-40, 42, 44-45, 47, 49, and 51 have been rejected under 35 U.S.C. §102(b) as anticipated by WO 00/75240 ("the '240 publication"). Claims 2-3, 8, and 14-15 have been rejected under 35 U.S.C. §103(a) as obvious over the '240 publication in view of U.S. Patent No. 5,082,660 ("the '660 patent"). Claims 4-5 have been rejected under 35 U.S.C. §103(a) as obvious over the '240 publication in view of U.S. Patent Application Publication No. 2003/0035883 ("the '883 publication"). Claims 4 and 7 have been rejected under 35 U.S.C. §103(a) as obvious over the '240 publication in view of U.S. Patent Application Publication No. 2003/0147820 ("the '820 publication"). Claim 6 has been rejected under 35 U.S.C. §103(a) as obvious over the '240 publication in view of the '883 publication and in further view of U.S. Patent No. 5,635,574 ("the '574 patent").

The instantly claimed invention is directed to an interference pigment comprising a multilayer structure with a spectral reflectance differing by not more than about 20% from a reference spectral reflectance C or M of skin as defined in Figure 4 for at least a portion of the visible spectrum 200 nm broad, said multilayer structure including at least one layer totally coating an underlying layer.

35 U.S.C §112

The Examiner has rejected claims 1 and 17 under 35 U.S.C. §112 second paragraph, as being indefinite because the

letters "C" and "M" are not defined in Figure 4. Therefore, the Examiner alleges that there is insufficient antecedent basis for "C" and "M" in the claims. Applicant respectfully disagrees. Even considering Figure 4 in a vacuum, without looking to the teachings of the specification, the letters "C" and "M" clearly are identifying curves on the graph which correlate the amount of reflectance of light at given wavelengths. This alone is sufficient to provide antecedent basis for their use in the claims. However, the specification goes further, stating that:

**"Fig. 4** shows the *in vivo* spectral reflection of the skin for an individual of a Caucasian type (curve C) and of half-cast type (curve M), as a function of the wavelength of the incident radiation. The measurements are taken using an integrating sphere placed on the skin. Reference may appropriately be made to the article "*Spectral Reflectance of human skin in vivo*" P. H. Anderson, P. Bjerring-Photodermatol-Photo imuno-Photomed 1990: 5-12." [0055].

Applicant encloses a copy of said article as Exhibit A.

Applicant respectfully submit that Figure 4 and the specification clearly illustrate that "C" and "M" refer to two specific spectral reflection curves and therefore have sufficient antecedent basis in the claims.

**35 U.S.C §102**

The Examiner has rejected claims 1, 9-13, 16-23, 26, 29-30, 32-34, 36-37, 39-40, 42, 44-45, 47, 49, and 51 as being anticipated by the '240 publication to Simon. The Examiner alleges that the '240 publication teaches an interferential pigment with a multilayer structure (p.2, ll.1-3), that the multilayer structure has a spectral reflectance corresponding to a predetermined type of skin or materials (p.3, ll.18-22) which could include all wavelengths between 400 nm and 700 nm (p.5,

11.3-5; p.9, 119-11) and that it includes a top layer covering the underlying layer (p.7, 11.13-14; p.16).

Applicant respectfully submits that the Examiner is mistaken concerning his assertion that the '240 publication discloses particles having a top layer totally covering the underlying layer. As discussed in response to the previous Official Action, the '240 publication teaches forming the multilayered by "depositing successive layers of the desired materials onto a flexible support" then "fragment[ing] it" to make the particles. (p.17, 11.18-22). Previously Applicant erroneously created the impression that the '240 publication stated that "this fragmentation process would expose underlying coating layers." This statement is not found in the reference. Nevertheless such exposure would inherently occur. The '240 patent teaches creating a multilayered film by depositing successive layers of material on the flexible support. It then teaches creating the disclosed particles by "fragment[ing]" the "coating". Such a process would inherently create exposure of all of the layers in the film at the locus of the fracture. Accordingly, said particles could not have "at least one layer totally coating an underlying layer" as claimed in the instant application. Instead, the particles would have each and every layer of the film exposed where the film was fractured. Therefore, Applicant respectfully submits that the anticipation rejection is traversed.

35 U.S.C §103

The Examiner has rejected claims 2-3, 8, and 14-15 as being obvious over the '240 publication in view of the '660 patent. The Examiner alleges, as above, that the '240 publication teaches a multilayer structure pigment having a spectral reflectance that does not differ by more than 10% in light reflected in the visible spectrum, from 400 nm to 700 nm and that the largest dimension of the pigment ranges from 10  $\mu\text{m}$

to 50  $\mu\text{m}$ . The Examiner admits that the '240 publication does not teach spherical or globular shapes. The Examiner refers to the '660 patent as teaching foundation compositions having particles of spherical shapes.

Applicant respectfully submits that the reason the '240 publication does not teach the claimed shapes because, as discussed above, the particles of the '240 publication are created by fracturing a multilayered film. The multilayered film, when fractured would create particles having a random assortment of shapes and would not lead to the claimed spherical shapes. The '240 publication fails to disclose how such multilayered particles could be manufactured in any other way which would retain the multilayered nature. Moreover, as discussed above, such particles would not have "at least one layer totally coating an underlying layer." Accordingly, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

The Examiner has rejected claims 4-5 as obvious over the '240 publication in view of the '883 publication. The Examiner asserts that the '240 publication teaches a multilayer structure pigment having a spectral reflectance that does not differ by more than 10% in light reflected in the visible spectrum, from 400 nm to 700 nm, that the largest dimension of the pigment ranges from 10  $\mu\text{m}$  to 50  $\mu\text{m}$ , and that the multilayer structure may be symmetrical. The Examiner admits that the '240 publication does not disclose the shape of the substrate. The Examiner asserts that the '883 publication teaches cores of spherical shapes.

Neither the '240 publication nor the '883 publication teach multilayered particles having "at least one layer totally coating an underlying layer." Accordingly, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

The Examiner has rejected claims 4 and 7 as obvious over the '240 publication in view of the '820 publication. The Examiner asserts that the '240 publication teaches a multilayer structure pigment having a spectral reflectance that does not differ by more than 10% in light reflected in the visible spectrum, from 400 nm to 700 nm, that the largest dimension of the pigment ranges from 10  $\mu\text{m}$  to 50  $\mu\text{m}$ , that the multilayer structure may be symmetrical, and that the pigment is coated with alternating layers of low and high refractive index. The Examiner admits that the '240 publication does not teach spherical cores made of glass. The Examiner asserts that the '820 publication teaches spherical substrates made of glass.

Neither the '240 publication nor the '820 publication teach multilayered particles having "at least one layer totally coating an underlying layer." Accordingly, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

The Examiner has rejected claim 6 as obvious over the '240 publication in view of the '820 publication and in further view of the '574 patent. The Examiner asserts that the '240 publication teaches a multilayer structure pigment having a spectral reflectance that does not differ by more than 10% in light reflected in the visible spectrum, from 400 nm to 700 nm, that the largest dimension of the pigment ranges from 10  $\mu\text{m}$  to 50  $\mu\text{m}$ , that the multilayer structure may be symmetrical, and that the pigment is coated with alternating layers of low and high refractive index. The Examiner asserts that the '820 publication teaches spherical substrates made of glass. The Examiner admits that neither the '240 publication nor the '820 publication teach that the substrate comprises a microsphere. The Examiner asserts that the '574 patent teaches pigments comprising a microsphere.

Neither the '240 publication, the '820 publication, nor the '574 patent teach multilayered particles having "at least one layer totally coating an underlying layer." Accordingly, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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